

# Montana Planning News

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# MONTANA PLANNING NEWS

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MAR 1 1978

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## Board Says Roll-back Tax Is "Unconstitutional"

While several agencies and individuals have lately been criticizing the effectiveness of Montana's roll-back tax, the State Tax Appeals Board (STAB) has gone one step further. In an appeal decision for a Great Falls real estate developer, Sun Prairie, Inc., STAB has attempted to rule the tax unconstitutional.

The roll-back tax, a feature of the 1973 "Greenbelt Act," was designed to discourage the development of agricultural land. It imposes a penalty on the developer amounting to the difference between the

taxes paid on the agricultural value of the land for the previous four years and the taxes that would have been paid on the fair market value.

James Steffek, STAB member, said he expects a court challenge of the board's authority to strike down the tax, but claimed: "... we felt this was the best way to proceed because it prevents any collection of the roll-back tax until the issue is finally resolved in court."

Dennis Burr, administrator of the Property Assessment Division of the Department of Revenue, disagreed. He said the department will continue to assess the roll-back tax and property owners will still have to appeal each case to STAB if they disagree.

"The main problem is that we have what is essentially an executive branch agency declaring that a law passed by the Legislature is unconstitutional," said Burr. He admitted that the roll-back tax is unpopular with his department, and he wouldn't mind the court declaring it illegal. But Burr noted that people have been paying the tax for the past five years, so his department feels it has to challenge STAB's decision.

Burr also criticized the text of STAB's decision, which according to him didn't appear to be well researched and seemed to be a "layman's opinion."

Richard Weddle, attorney for the DCA Planning Division, agreed with Burr's assessment and said of STAB's decision: "This is roughly equivalent to a zoning appeals board declaring that a zoning ordinance is illegal; there simply doesn't seem to be any legal basis for this action." (Continued on Page 2)

The newsletter Area Development Interchange quotes pollster Lou Harris:

"Our surveys show that more people, nearly one in four, have gone to their local government in this country to get something done than have gone to their state and federal government combined. Yet, scarcely a third of those who reported having gone to local government received satisfaction. Well over four in ten reported they had been totally frustrated in their efforts, higher than any other level of government.

"At the same time, a substantial 42 percent of the citizens feel that local government is closer to the people and ought to know their problems better, and 69 percent would opt for strengthening local government, if the right leadership asked for it. Most important of all: by 90 percent, an overwhelming majority still have faith; they say local government can be made to work well."

# Roll-back Tax (continued)

The STAB decision incorporated six objections from Sun Prairie, Inc.: 1) that the roll-back amounts to double taxation; 2) that the language in the law is vague, meaningless and ambiguous; 3) that it makes an unreasonable distinction between agricultural land and other land; 4) that the roll-back tax has not been applied uniformly; 5) that the tax imposes an arbitrary burden on development, and 6) that the law gives no guidelines as to when a change in land use has taken place and the tax takes effect.

STAB agreed with Sun Prairie's objections and added one of its own—that the roll-back tax violates a state constitutional provision requiring the state to appraise, assess and equalize the valuation of all property.

STAB member James Steffek stated a personal objection in a special concurring opinion: "... this statute imposes a tax penalty on the free choice of those who wish to live in the country, and not on those who wish to live in town."

The Planning Division recently released a report outlining several weaknesses of the roll-back tax: the amount of the penalty is often too small to discourage development; it makes it cheaper to subdivide prime agricultural land than secondary agricultural land; it encourages development far from existing populations, resulting in "hopscotch" patterns of growth; it often applies to the lot buyer rather than to the developer, so it can act as a tax shelter for the developer and a hidden cost to the purchaser.

Weddle summed up the Planning Division's view of STAB's action: "We'd like to see improvements in the Greenbelt Act so that it does what it was designed to do—promote good land use on agricultural land—but we don't believe the State Tax Appeals Board is the proper agency to institute those changes... our department prefers to let the courts decide the constitutionality of the laws."

"There's some concern that STAB's action might be interpreted as an attack on the differential assessment and taxation of farmland, putting that much more pressure on farmers and ranchers."

Copies of the DCA report "Differential Taxation and Agricultural Land Use" are available from the DCA Planning Division, Capitol Station, Helena, MT 59601/(406) 449-3757.

## Northern Tier

The Bureau of Land Management has announced two public meetings on the proposed Northern Tier Pipeline. The first will be March 14 at 2 p.m. in the UM University Center in Missoula; the second will be March 21 at 2 p.m. in the Ramada Inn in Billings.

The proposed pipeline would carry Alaskan crude oil to Clearbrook, Minnesota. The route crosses 16 Montana counties: Sanders, Lake, Missoula, Granite, Powell, Lewis and Clark, Jefferson, Broadwater, Meagher, Wheatland, Golden Valley, Musselshell, Rosebud, Custer, Prairie and Wibaux.

For more information, contact: Project Manager, Northern Tier Environmental Team, P.O. Box 2965, Portland, Oregon 97208/ (toll-free) 1-800-547-5532.

### Montana Planning News

March 1978

Volume 1, Number 2

The Montana Planning News is published each month by the Planning Division of the Montana Department of Community Affairs. There is no subscription charge. To get on our mailing list, write to the Montana Planning News, DCA Planning Division, Capitol Station, Helena, MT 59601 or call (406) 449-3757.

We welcome responses to articles, reader letters and article suggestions.

This publication is financed in part by a grant from the U.S. Department of Housing and Urban Development under the provisions of Section 701 of the Housing Act of 1954, as amended.

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*The Zoning Ordinance Is Normally a Clear Concise Document with Liberal Cross References, and with Some of the Amendments Pasted In.*

## Montana Planning People

There are four new planning board presidents in Montana: Malvin Merja of Sun River for the Cascade County Planning Board; Neil Mouldenhaur of Winston for the Broadwater County Planning Board; Dave Viotor of the Rocking Chair Ranch near Philipsburg for the Granite County Planning Board; Earl Wright of Hamilton for the Ravalli County Planning Board.

Five planners joined Montana planning staffs in February. Dave Bohyer is the new assistant planner for the Lewistown City-County Planning Board. Bohyer, a 1976 graduate of Montana State University, will help draft floodplain regulations and zoning plans for the area around Lewistown.

Ron Cooper, who spent the last year administering the Adirondack Park Plan in New York State, has joined the Bozeman City-County Planning Board. Cooper will be an associate planner.

Kathy Marks has been hired as a part-time employee of the Broadwater County Planning Board. She will serve as coordinator of planning activities and as secretary to the board.

The DCA Planning Division has two new employees. Carol Daly has been hired to fill a vacancy in the Local Planning Services Bureau. She will be working with local planning boards and staff in western Montana.

Barbara Garrett will be working on the Urban Mass Transit Program, assisting local areas to design and implement transit plans.

At its January 26th meeting, the Montana Coal Board approved the hiring of its new administrative officer, Murdo Campbell. Campbell replaced Barbara Garrett, who resigned that position last December. Before coming to work for the Coal Board, Campbell, a Great Falls native, served as administrative assistant to the Cascade County Commissioners.

# This Billboard Banned in Bangor!

You won't be likely to find off-premise billboards in Maine within six years, if a new state law withstands a pending court test.

The Maine statute, which took effect January 1 of this year, gives owners of billboards along major roads four years to remove them, and owners of billboards along secondary roads six years to remove them. The ban would not apply to billboards located on business premises. The off-premise billboards could be replaced by a limited number of uniform "official business directional signs." The law also establishes a compensation formula for the billboard owners.

Two advertising companies have attacked the

statute on the grounds that it violates constitutional guarantees of free speech and takes their property without just compensation or due process of law.

In their complaints, the advertisers maintained: "The public streets and highways have historically been used, and continue to be used, as an important and significant forum for the meaningful exercise of the freedom of speech."

The state's position is that the statute regulates the time, place and manner of the advertising, but not its content—a distinction recognized by the U.S. Supreme Court.

## BRIEFS

**BILLINGS** . . . 1978 grazing fees for Bureau of Land Management and U.S. Forest Service lands will remain at 1977 levels . . . at least for a little while!

The agencies have proposed higher 1978 grazing fees in their new regulations, but the required public comment and review period will delay their final decision past the usual billing date, so both will send out preliminary billings with fees pegged at 1977 levels.

However, a news release from the Montana BLM office assures that: "Once a decision is made a revised billing will be issued indicating any additional payments, refunds or credits due the livestock operators or the two Federal agencies."

Montana Representative Max Baucus and Wyoming Rep. Teno Roncalio have co-sponsored a House bill that would impose a one-year moratorium on grazing fee hikes, keeping fees at 1977 levels. Two similar bills have been introduced in the Senate.

**HELENA** . . . March 10 is the date of a public hearing the State Board of Health and Environmental Sciences will hold on proposed water quality standards for Montana. The meeting will start at 9 a.m. in the Cogswell Building Conference Room in Helena.

There are several proposed changes to existing water quality standards, including a new water classification for streams, a state waters chlorination policy and regulations on wastes from chemical ore processing facilities.

For more information, contact Water Quality Bureau Chief Don Willems at 449-2406.

# off the cuff

By John Barrows



Reprinted from the January 19th  
Ravalli Republic

One of the perplexing problems facing the planning board, and the county commissioners, is that of minor subdivisions. Originally set up by lawmakers to make subdivisions of small plots of land easier to develop, it was probably not intended to handle the parcelling of large areas for residential building on an extensive scale.

The Cook-Hensler ranch in the north valley is an example. Developers of the ranch are breaking no laws in piece-meal development of the area. In fact, they appear to be scrupulously following each item in the current law.

Whether or not the development, if fully

utilized, will even result in some of the economic impacts (particularly to Florence Carlton School) that some fear, is still conjecture. The real problem comes from the fact that present regulations allow large areas to be subdivided, sold and developed with only some of the safeguards provided for in major subdivision law.

It's a provision that may, in the future, work to the disadvantage of all residents. Large scale developments deserve a close look so that they may be best planned for the greatest benefits with the lowest diverse economic and ecological impact possible.

From a practical standpoint there is no way to shut the barn door . . . and no one is even thinking about it. It's just a matter of making the new stalls fit in with the rest of the barn.

## PRP Looks at Resource Agencies Reorganization

WASHINGTON, D.C. . . . There's been much speculation recently about a shake-up of Federal natural resources agencies and programs. The rumors stem from a January 6 memo from the Presidents' Reorganization Project (PRP) which strongly criticized almost all Federal management of land, forest and ocean resources and environmental protection measures. The PRP apparently is looking at a major overhaul of those programs, possibly with the creation of a Cabinet-level Natural Resources Department.

One option would enlarge the Interior Department by transferring in the Forest Service and Soil Conservation Service from the Department of Agriculture, the dam-building functions from the Army Corps of Engineers, fisheries programs from the Commerce Department and possibly the independent Environmental Protection Agency and Council on Environmental Quality.

Opposition to any such proposal seems assured—the Society of American Foresters and several Senators have already issued statements against the idea.

Despite reports that any reorganization proposal will be tabled until next year, a recent **Land Use Planning Reports** claims that PRP officials will bring a reorganization proposal to Congress this April.

There is at least one proponent of the reorganization proposal: Department of Interior Secretary Cecil Andrus has sent a letter to the PRP suggesting he does not want to see any "jurisdictional turf battles" but he favors making the Interior Department into the new resources superagency.

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# "PUBLICATIONS"

**LAND USE: Tough Choices in Today's World**, SCSA, 1977, 454 pp., \$7.00; Available from the Soil Conservation Society of America, 7515 Northeast Ankeny Road, Iowa 50021

*The proceedings of SCSA's 1977 national symposium on land use planning—contains over 50 papers presented by planners, landowners, attorneys and others.*

**RESIDENTIAL DEVELOPMENT HANDBOOK (#R09)**, ULI, 1977, 350 pp., \$21.00 to ULI members, \$28.00 list plus \$1.00 for handling. Available from the Urban Land Institute, Publication Orders, 1200 18th Street, N.W., Washington, D.C. 20036.

*Covers all aspects of the residential development process, from project feasibility, design, marketing and development maintenance to evaluation and future trends.*

**AND ON THE EIGHTH DAY. . .**, Hedman and Bair, ASPO, 1976 (Third Edition), \$4.50; Available from the ASPO Planning Bookstore, 1313 E. 60th St., Chicago, IL 60637.

*More planning cartoons. Mr. Hedman has teamed up with Mr. Bair in this extensively revised (spelling corrected) 3rd edition of a classic in planning humor.*

**THE POLITICS OF LAND USE PLANNING: A Review Essay and Annotated Bibliography**, Irving Schiffman, IGA, 1977, 110 pp., \$4.50; Available from the Regents of the University of California, Institute of Governmental Affairs, Shields Library, University of California, Davis, California 95616.

*An annotated bibliography of 272 readings on the influence of local government on the use and transformation of urban lands.*

**PUBLICATIONS FROM THE DCA PLANNING DIVISION**, Capitol Station, Helena, MT 59601

"Differential Taxation and Agricultural Land Use," October 1975 (revised January 1978), 35pp. 50¢

*An explanation and evaluation of Montana's "Greenbelt" law.*

"Suggested Model Criteria for Determining Evasion of the Subdivision Act," January 1978, Free.

*Suggestions to help local officials and planning boards adopt criteria for deciding when an exemption has been used to evade the intent of the Subdivision and Platting Act.*

## BRIEFS

**BOZEMAN . . .** Land Resource Notes is the title of a new newsletter put out by the Cooperative Extension Service in Bozeman. According to Editor Paul Kresge: "Information goes across desks into file folders or wastepaper baskets daily without proper distribution. This publication is an attempt to get this information out with some semblance of efficiency." He adds that the newsletter's frequency and contents will depend on time and material available and that reader contributions are welcome.

The free publication is available to anyone interested. Write Paul Kresge, Extension Soil Scientist, 806 Johnson Hall, Montana State University, Bozeman, MT 59715 or call (406) 994-3515.

**HELENA . . .** Over 600 energy research projects in or concerning Montana are described in a 400-page publication recently released by the Montana Energy Office. MEO says its **Directory of Energy Research and Development Projects** is a useful guide for researchers, local, state and federal planners and others involved in energy research.

The **Directory** costs \$3.00, and you can order a copy from the Montana Energy Office, Capitol Station, Helena, MT 59601/(406) 449-3940.





*Statistics are an Important Aid in the Decision Making Process*

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## everything you always wanted to know about the city block statistics program\*

The Bureau of the Census has announced its City Block Statistics Program for the 1980 Census.

The Bureau will print, at no charge, population and housing statistics for each block in an incorporated area that had a population of 10,000 or more in the 1970 Census, or in the 1973, 1975 or 1976 official population estimates, or in any special census conducted by the Bureau on or before December 31, 1977. Additional data not contained in the printed reports may be available on computer summary tapes for purchase from the Bureau.

Incorporated areas not qualifying for the regular City Block Statistics Program may contract to purchase the data from the Census Bureau. Requesting authorities must: 1) sign a contract with the Bureau and pay a downpayment of \$250 by April 1, 1978; 2) provide the Bureau with adequate maps delineating each block within 30 days of the signing of the contract, and 3) pay the balance of the fee by January 1, 1980.

Fees will be based on 1980 Census figures. Areas

with fewer than 2,500 inhabitants shall pay \$500, those with 2,500 to 4,999 shall pay \$600, and those with between 5,000 and 9,999 shall pay \$700. Multiple area contracts may be negotiated for a lower fee.

Any incorporated area that reaches the 10,000 population figure in the 1980 census will be included in the regular Block Statistics Program and any contracted fee will be completely refunded.

Also, the Census Bureau has pending a budget request to include all incorporated areas with 2,500 or more inhabitants in the regular Block Statistics Program; if this request goes through, contract fees paid by those areas will be refunded.

To get more information, or to request participation in the contract program, write to Mr. Arthur F. Young, Chief, Housing Division, Bureau of the Census, Washington, D.C. 20233. The Montana contact for the program is Tom Dundas, Jr., DCA Research and Information Systems Division, Capitol Station, Helena, MT 59601/(406) 449-2896.

\*BUT WERE AFRAID TO ASK

# Judge Addresses Energy Development Impacts

Calling for more state and local participation in Federal decisions, Montana Governor Tom Judge joined three other coal-state governors to present Energy Secretary James Schlesinger and Commerce Secretary Juanita Kreps with a plan to assist areas impacted by rapid energy development.

Judge charged the federal government with taking a "don't look at it and it might go away" attitude toward energy development impacts and said: "Those problems are not going to go away unless they are solved, and there's no way the severity of such problems as highway inadequacies are going to be solved without prompt and adequate federal assistance."

The four governors, members of a National Governors' Association Subcommittee on Energy Impact Assistance, called for immediate gubernatorial designation of energy-impacted areas, a joint assessment of adverse energy impacts by a team of state and federal officials and other points including federal planning grants to fund the assessments.

"Ninety-eight percent of Montana's coal is being shipped out-of-state to fill national energy needs. Montana taxpayers . . . are being expected to pick up the tab in lieu of assistance on the national level and by private development corporations. We have already done far more ourselves than is equitable," Judge stated.

Judge also discussed a threatened industry lawsuit against Montana's coal severance tax with Vice President Walter Mondale, who joined the meeting.

Besides Judge, the governors attending were Richard Lamm (Colorado), Arthur Link (North Dakota) and Jay Rockefeller IV (West Virginia). An assistant to President Carter, Jack Watson, also attended the January 30th meeting in Washington, D.C.

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